

## REMARKS

### The Pending Claims and the Amendments to the Drawings, Specification, and Claims

With the entry of the amendments above, Claims 21-33 remain pending in the application, with Claim 21 being the only independent claim. Claim 21 is amended to recite the stacking of the bagged products so that the products are “on top of one another”. Support for this amendment can be found at, for example, Page 8 lines 4-5 of Applicants’ specification as originally filed. In addition, in clause (D) of Claim 21, the word “with” has been changed to the word “within”, to correct an inadvertent and obvious typographical error and to improve the readability of Claim 21.

The amendments to Page 39 of the specification deletes description of cross-sectional views not included with the application as originally filed. Figure 3 illustrates an end-seal bag, and Figure 4 a side-seal bag, these bags being different from one another. Applicants appreciate the Examiner’s attention to this detail in Paragraph 2 of the 5 November Office Action.

The drawings are amended by the addition of Proposed New Figure 5, which is a schematic of a stack sealing process in which a vacuum chamber (Page 8, lines 3-4) holds a first product which has been placed in first bag and second product which has been placed in second bag (Page 7 lines 18-21), with the resulting bagged products being stacked on top of one another (Page 8 lines 4-5), with excess bag length of each of first bag and second bag positioned on top of one another and within sealing distance of a means for sealing (Page 7 lines 21-23), ready for subsequent evacuation and sealing (Page 8 lines 3-5). The drawing illustrates that which the specification already discloses at the pages and lines indicated.

Similarly, Page 5 of the specification is amended to refer to the schematic of New Proposed Figure 5, and Page 34 of the specification is amended by the addition of a generic description of the various features illustrated in Figure 5, including vacuum chamber 172, first product 174, first bag 176, second product 178, second bag 180, with the resulting bagged products being stacked on top of one another, and with excess bag length of each of first bag 176 and second bag 178 positioned

on top of one another and within sealing distance of a means for sealing 182, ready for subsequent evacuation and sealing. Support for this paragraph corresponds with the support for the various features of Newly Presented Figure 5, as noted above.

The amendments contain no new matter.

#### The Rejections under 37 U.S.C. §112, First Paragraph

In Paragraph 4 of the 5 November Office Action, Claims 21-33 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. More particularly, Paragraph 4 states that Claim 21 recites a process for packaging including stacking and sealing, but that no drawings show how the process is practiced and the specification does not describe what orientation is meant by stacking, and that as to Claim 24, there is no depiction of how this process can be carried out in a rotary chamber vacuum machine.

In response, Applicants direct attention to Newly Proposed Figure 5 and the amendments to the specification. Applicants contend that those of skill in the art would readily recognize that “stacking on top of one another”, as disclosed in Applicant’s specification (as originally filed) and as recited in Applicants’ claims (also as originally filed), necessarily discloses the arrangement illustrated in newly-proposed FIG. 5. As such, Applicants contend that their specification, as filed, clearly enables the process of Claim 21, as the “stacking...on top of” language can only have the meaning illustrated in FIG. 5.

As to the recitation of “rotary chamber vacuum machine” in Claim 24, Applicants direct attention to U.S. Patent No. 4,754,596, to Yasumune et al, more particularly to Col. 1, lines 12-20, as follows:

It is well known to package foodstuffs such as livestock meat with thermoplastic packaging bags in a vacuum environment. For this purpose, the foodstuffs to be packaged are supplied into a plurality of vacuum chambers disposed on the periphery of a turntable. This type of a vacuum packaging apparatus is called a rotary chamber type. Some of this type of apparatuses are disclosed in U.S. Pat. Nos. 2,630,955, 2,740,243 and 3,598,391.

Applicants contend that rotary chamber vacuum machines are notoriously well known, and that 37 C.F.R 1.83(a) does not require the drawings to include conventional features where their detailed illustration is not necessary for a proper understanding of the invention. As is apparent from the above paragraph from Col. 1 of the '596 patent, it is apparent that at least as far back as 1988 (the issue date of the '596 patent), rotary chamber vacuum packaging machines were well known to those of skill in the art. Additional early prior art documents disclosing rotary chamber vacuum machines can be provided, should the PTO so desire. Accordingly, Applicants respectfully request withdrawal of the §112 first paragraph rejection of Claim 24 .

#### The Various Rejections under 35 USC §103(a)

In Paragraph 6 of the 5 November 2002 Office Action, Claims 21, 22, 25-27, and 29-33 are rejected under 35 U.S.C. §103 as unpatentable over U.S. Patent No. 5,845,463, to Henaux ("HENAUX") in view of U.S. Patent No. 5,336,549, to Nishimoto ("NISHIMOTO"). The Office Action states that HENAUX discloses the invention as claimed including placing a product into a heat-shrinkable bag having an open top and excess bag length, repeating the placing step for a second product, stacking the first and second bagged products so that the excess bag length of each of the bagged products are within a sealing distance of a means for heat sealing, followed by heat sealing the inside layer of the first bag to itself and the inside layer of the second bag to itself, with each product being completely sealed within its respective bag and with the resulting packaged products being freely separable from one another. The Office Action goes on to refer to FIG. 1 of HENAUX as disclosing the stacking of 2 and 3 bagged products on top of one another during heat

sealing. The Office Action goes on to acknowledge that HENAUX does not specifically disclose the multilayer film from which the bag film is made, but states that NISHIMOTO teaches the recited multilayer film from which the bag is made, i.e., containing a first layer, which is an outer layer (and an inside layer of the bag) comprising an ethylene/butene copolymer, an ethylene/vinyl acetate copolymer in the second layer, a layer comprising a polyamide having a melt point of 135°C, and a layer comprising polyester having a melt point of 237°C, etc, and that the first layer is sealed to itself. The Office Action concludes that it would have been obvious to one of ordinary skill in the art to use the film of NISHIMOTO et al in the process described by HENAUX.

In Paragraph 7 of the 5 November Office Action, Claims 23 and 28 are rejected over HENAUX in view of NISHIMOTO et al, further in view of U.S. Patent No. 4,469,742, to Oberle et al ("OBERLE et al").

Applicants contend that each of Claims 21, 22, 25-27, and 29-33 are patentable over HENAUX in view of NISHIMOTO et al. Applicants contend that FIG. 1 of HENAUX does not teach or suggest Applicants' recited stack sealing process because the bags are not stacked on top of one another, as required by Applicants Claim 21, as amended above. The three bags being sealed concurrently in FIG. 1 of HENAUX are not stacked on top of one another...rather, they are attached to one another and are in a side-by-side relationship. In contrast to Applicants' invention, in HENAUX that portion of the seal bar which contacts each of the bags seals only the one bag, not a plurality of bags. As such, it is apparent that the bags in HENAUX are not in a stacked-on-top-of-one-another relationship, as required by Applicants' claims. Moreover, Applicants contend that those of skill in the art would readily realize that if bags are "stacked", one is atop another. As such, the amendment to include the words "on top of one another" is redundant language.

Furthermore, Applicants note that the recited feature of the product-containing bags being stacked on top of one another is not a newly-introduced feature, as it was present in Applicants' Claims 25 and 26 as originally filed at the filing date of parent application USSN 09/034,410, filed

March 4, 1998. As HENAUX does not teach or suggest stacking of bags on top of one another during sealing, the Office Action fails to make out a prima facie case of obviousness.


Applicants contend that the above arguments further apply to the rejection of Claims 23 and 28 as unpatentable over HENAUX in view of NISHIMOTO et al further in view of OBERLE et al.

Accordingly, Applicants contend that both of the §103 rejections relying upon HENAUX should be withdrawn, and the patentability of the claims reconsidered, with a view towards allowance.

#### Conclusion

Applicant respectfully requests favorable consideration of the claims as amended, with a view towards allowance. Should there be any questions or suggestions, the Examiner is invited to contact the undersigned at the telephone number provided below.

Respectfully Submitted,



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Attachments: "Proposed New Figure 5" (1 sheet)  
U.S. Patent No. 4,754,596, to Yasumune et al.

## APPENDIX

The various amendment to the claims are apparent from the marked-up claim text below, in which brackets indicate recitations deleted and underlining indicates recitations added.

21. A process for packaging a product, comprising the steps of:

- (A) placing a first product into a flexible, heat-shrinkable bag, the bag having an open top, whereby a first bagged product having excess bag length results, and wherein the bag comprises a multilayer film comprising:
  - (1) a first layer, which is an inside bag layer, and which comprises polyolefin;
  - (2) a second layer comprising at least one member selected from the group consisting of polyolefin, polystyrene, and polyurethane;
  - (3) a third layer comprising a polyamide having a melting point of 160°C and below;
  - and
  - (4) a fourth layer, which is an outside bag layer, the fourth layer comprising polyester;
  - andwherein the bag is produced by sealing the first layer to itself, whereby the first layer is an inside bag layer and the fourth layer is an outside bag layer;
- (B) repeating the placing step with a second product and a second bag, whereby a second bagged product results;
- (C) stacking at least the first and second bagged products so that the excess bag length of each of the bagged products are on top of one another within a sealing distance of a means for heat-sealing;
- (D) heat-sealing the inside layer of the first bag to itself in the region between the open end of the first bag and the product, and the inside layer of the second bag to itself in the region between the open end of the second bag and the product, so that the first product is completely sealed within the first bag and the second product is completely sealed [with]

within the second bag, the sealing being carried out at a temperature so that the resulting packaged products can be freely separated from one another without layer delamination.